IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Bhajan Lal. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 558/2006 against the order dated 24-1-2006 passed by the Additional Sessions Judge No.2, Sri Ganganagar, in Criminal Revision No.46/2005.

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Date of Order: August 21, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. C.S. Kotwani, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner has challenged the order dated 24-1-2006 passed by the Additional Sessions Judge No.2, Sri Ganganagar (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 46/2005, whereby the revision petition filed by the petitioner against the order dated 25-8-2005 passed by the Judicial Magistrate No.2, Sri Ganganagar (for short, "the trial Court" hereinafter) in Criminal Case No. 176/2004, was dismissed.

I have heard learned counsel for the petitioner. Carefully gone through the orders passed by the trial Court as well as the Revisional Court.

A complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act" hereinafter) was filed by non-petitioner No.2 Tarun Choudhary against the present petitioner before the trial Court with the allegation that the petitioner issued a cheque, which on presentation to the bank, was dishonoured and returned unpaid with the endorsement of "insufficient fund." A statutory notice requiring the cheque amount was served on the petitioner. The petitioner failed to make payment within the period specified in the notice i.e. 15 days from the date of receipt of the statutory notice. The complaint was filed under Section 138 of the Act within the limitation. The complainant/non-petitioner No.2 produced the evidence, including the documentary evidence. The cheque in question was tendered in the evidence and proved as EX.1. The statement of the petitioner under Section 313 of the Code has been recorded and the matter was posted for final arguments. At the stage of final arguments, the petitioner filed an application before the trial Court seeking to get the cheque in question examined by the Handwriting Expert on the ground that though the cheque bears his signature but the other particulars, including the name and the amount, have not been filled up by

him. That application came to be dismissed by the trial Court vide order dated 25-8-2005, against which the petitioner filed a revision petition and the Revisional Court also did not find any ground to interfere and dismissed the same. Hence this criminal miscellaneous petition.

It is contended by the learned counsel for the petitioner that there is material alteration in the cheque EX.1 and, therefore, the petitioner seeks to get the cheque in question examined by the handwriting expert to ascertain as to whether the particulars on the cheque have been materially altered.

Section 87 of the Act pertains to the effect of material alteration and provides that any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. From a bare reading of the language of Section 87 of the Act, it is clear that if a negotiable instrument is materially altered then it would render the same void unless it is established that the alteration was made with the consent of the signatory to the cheque.

Section 118 of the Act reads as under:-

> "118. Presumption as to negotiable instruments.- Until the contrary is proved, the following presumptions shall be made-
>
> (a) of consideration.- that every negotiable

> instrument bearing a date was made or drawn on such date;
>
> (b) as to date.- that every negotiable instrument bearing a date was made or drawn on such date;
>
> (c) as to time of acceptance.- that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
>
> (d)as to time of transfer.- that every transfer of a negotiable instrument was made before its maturity;
>
> (e) as to order of endorsement.- that the endorsements appearing upon a anegotiable instrument were made in the order in which they appear thereon;
>
> (f) as to stamp.- that a lost promissory note, bill of exchange or cheque was duly stamped;
>
> (g) that holder is a holder of due course.- that the holder of a negotiable instrument is a holder in due course;
>
> Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

In the instant case, the cheque given by the petitioner to the non-petitioner No.2 has not been disputed. The signature of the petitioner on the cheque has also not been disputed. The only dispute raised by the petitioner is that the date and the amount were not filled on the cheque by him and, therefore, by inserting the date and amount, a material alteration has been made on the instrument.

In Bhaskaran Chandrasekharan Vs. Radhakrishnan, 1998 Cr. L.J. 3228, the Hon'ble Apex Court held that if alteration is made with the consent of the drawer of the cheque, it may not amount to material alteration, because the holder of the undated cheque has got the implied authority to put the date on the cheque. Once the date is shown on the cheque, the burden is on the drawer of the cheque to prove that the payee had no authority to do so. It was further held that insertion of the date on an undated cheque would not amount to material alteration, since the holder in due course has got implied authority to do so, unless it is otherwise proved by the drawer of the cheque.

In the instant case, it is open for the petitioner, who is the drawer of the cheque, to prove contrary that he did not give consent or authorized the complainant/non-petitioner to insert the date and amount on the cheque issued by him and duly signed by him.

Faced with this situation, learned counsel submits that the petitioner may be permitted to lead evidence before the trial Court to the effect that the holder of the cheque in due course has got no implied authority to put the date and amount on the cheque.

In this view of the matter, in my view, both the courts below were justified in dismissing the application filed by

the petitioner seeking handwriting expert's opinion.

The criminal miscellaneous petition is, therefore, disposed of. However, it is open for the petitioner to lead evidence to rebut the presumption as envisaged under Section 118 of the Act before the trial Court. If the petitioner moves before the trial Court, the trial Court shall consider the provisions of Sections 87 and 118 of the Act and allow the petitioner to rebut the presumption. The stay petition stands dismissed.

(H.R. PANWAR), J.

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